NOTE

ON THE

CIVIL AND CRIMINAL

ADMINISTRATION OF JUSTICE

IN

AZAD KASHMIR.

1st January, 1948,

TO

30th June, 1949.

MUZAFFARABAD,
October 1949.

AZAD JAMMU & KASHMIR HIGH COURT OF JUDICATURE.

From:-

M: Basheer Ahmad Farooqui.,
B.A.(Hons) LL.B.
Registrar High Court of Judicature.

To:-

The Chief Secretary.
West Pb. Govt. Lahore..

No: 6-A/ 3969-4048 dated Rawalpindi the 25th Oct' 1949.

SUBJECT:- Civil & Criminal administration of Justice in Azad Kashmir for the period from 1st. Jan'48 to 30th June 1949.

MEMORANDUM.

I am directed to send herewith a copy of the note on the Civil and Criminal administration of Justice in Azad Kashmir. It is hoped that it will be found intersting to read.

25/X/49.

Registrar.,
Azad Jammu & Kashmir High Court,
of Judicature.

Azad Jammu and Kashmir High Court
of Judicature.

No. 100/P/216/C/49.

Muzaffarabad,
The 16th October, 1949.

To

THE REGISTRAR,
High Court of Judicature,
MUZAFFARABAD.

SIR,

I am directed to acknowledge receipt of the Note on the Administration of the Criminal and Civil Justice in the Azad Kashmir, forwarded with your letter No. 6-A/3482, dated the 5th October, 1949, and to request that the thanks of the Hon'ble President may please be conveyed to the Hon'ble Judges for their efficient and careful administration of Criminal and Civil Justice during the period from 1st January 1948 to 30th June, 1949.

I have the honour to be,
SIR,
Your most obedient servant,
Sd. S. H. ZAIDI, P. A.,
for Private Secretary.

AZAD JAMMU & KASHMIR HIGH COURT OF JUDICATURE.

From

KHAWAJA BASHIR AHMAD FAROOQUI,
B. A. (HONS) LL. B.,
Registrar, Azad Jammu and Kashmir
High Court of Judicature,
Muzaffarabad.

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To

The Personal Assisstant to the Hon'ble President,
Azad Jammu and Kashmir Government,
Muzaffarabad.

No. 6-A/3482. *Dated the 5th October, 1949.*

Subject:— Note on the Administration of Civil and Criminal Justice.

SIR,

I am directed to enclose herewith for the information of the Hon'ble President one advance copy of Note on the Administration of Civil and Criminal Justice in the Azad Kashmir territory during the period from 1st January 1848 to 30th June, 1949.

The review of the Hon'ble President on the note may kindly be forwarded to me.

It is intended that two hundred copies of the note shall be printed

I have etc., etc.
Sd./ BASHIR AHMAD Farooqui,
Registrar,
Azad Jammu and Kashmir High Court
of Judicature.

No. 100/P/216/C/49.

Muzaffarabad,
The 16th October, 1949.

To

THE REGISTRAR,
High Court of Judicature,
MUZAFFARABAD.

SIR,

I am directed to acknowledge receipt of the Note on the Administration of the Criminal and Civil Justice in the Azad Kashmir, forwarded with your letter No. 6-A/3482, dated the 5th October, 1949, and to request that the thanks of the Hon'ble President may please be conveyed to the Hon'ble Judges for their efficient and careful administration of Criminal and Civil Justice during the period from 1st January 1948 to 30th June, 1949.

I have the honour to be,
SIR,
Your most obedient servant,
Sd. S. H. ZAIDI, P. A.,
for Private Secretary.

Note
On the Civil and Criminal Administration of Justice.

—:o:—

1. Territorial Jurisdiction.

The area of the territory under the administration of the Azad Kashmir Government is approximately 5,000 Sq: miles extending over three districts of Mirpur, Poonch and Muzaffarabad. The population of this area in 1941 was 10,73,355. The present approximate population is 9,69,764. The difference is accounted for by the migration of the population to India-held territory and Pakistan on account of the disturbed conditions prevailing in the territory before it was liberated from the Dogra Regime. The details of the migration of the population supplied by the officers in-charge of the districts indicate that all Muslims migrated to Pakistan while all non-Muslims, with the exception of a few, who took shelter in the enemy-held territory, migrated to India.

2. Police and Magistracy.

There are 25 police stations and 18 police posts in all the three districts. Each district is administered by a Deputy Commissioner who is also the District Magistrate. There are three Courts of District and Sessions Judges, one in each District. In the administration of criminal justice the District Magistrates are assisted by seven Sub-Judges who are 1st Class Magistrate and exercise enhanced powers under section 30 Cr: P. C. On the civil side they hear cases upto the value of Rs. 5,000/-. Two additional Deputy Commissioners, three Revenue Assistants, eight Tehsildars and eleven Naib-Tehsildars are also exercising Magisterial powers. The Additional Deputy Commissioners are invested with section 30 Powers, the Revenue Assistants are invested with 1st Class magisterial powers, while Tehsildar and Naib-Tehsildars are invested with 2nd and 3rd Class powers respectively.

3. Period under review.

After the territory had been liberated by the efforts of the Azad Kashmir people from the clutches of the Dogra Regime in the closing days of year 1947, the administrative machinery was set up, but it was not before January 1948 that it started to run in a perfect and normal manner. The High Court was constituted in May 1948. The period under review, therefore, begins from 1st January 1948 and extends to the close of June, 1949, covering a period of one and a half years.

A. CRIMINAL.

4. Offences reported and found true.

The number of offences reported during the priod under review to the police, and, through private complaints, to Magistrates was 1556 and 6576 respectively.

Out of the total number of cases reported to the police and investigated 1264 were found true.

NOTE :—A case is said to be true when it is not dismissed under section 203, Cr: P.C. nor, if based on a report to the police under section 154 Cr: P.C. written off as 'false' or 'not-admitted' by a magisterial order.

5. Cases brought to trial.

All cases in which an accused person appeared personally or by agent before a Court are classed as 'cases brought to trial'. In the period under review 4999 cases were brought to trial for vaious offences under the Azad Kashmir Penal Code.

6. Persons convicted, acquitted or discharged.

The total number of persons brought to trial was 13773, out of whom 3387 were still under trial on 30th June, 1949. Of the 10,067 persons whose cases were decided, 7574 were acquitted or discharged and 1327 were convicted.

Of the persons acquitted or discharged about 25% were discharged in consequence of the non-appearance of the complainants or the withdrawal of the complaints.

7. False evidence and offences against public justice.

No person was prosecuted for giving false evidence and it is creditable to the Government as well as to the people, in as much as it conveys an impression that the people have begun to realise that they should not speak lie before the officers of the Government which is their own and thus render the task of the Courts somewhat difficult in arriving at the truth. It is creditable for the Government because their efforts, in impressing upon the people that Islam requires the witness to give true evidence even if their statements went againt their kith and kin, were fruitful.

8. Serious offences against property.

Before the territory was liberated the armies of the Dogra tyrants had practically looted all the belongings of the people and consequently no serious offence against property was reported, found true or brought to trial.

9. Offences affecting life.

Three hundred and seventeen persons in cases affecting human life were brought to trial out of whom cases of 48 persons were still pending decision in the Courts of Sessions. One hundred and five cases were decided in which 85 persons were convicted for murder, the rest were discharged, acquitted or awarded penalties other than death or life imprisonment. The number of persons tried for offences under this category was somewhat great and the reason for it is not far to seek. In the early days of Azad Kashmir Government the conditions were somewhat disturbed and the people tried to avenge their old wrongs and this is evidenced by the decrease in serious crime in the last half of the period under review.

Of the persons convicted for murder 47 were sentenced to death and 3 to life imprisonment.

10. Kidnapping, Forcible Abduction, Youthful Offenders and Matrimonial Offences.

The offence of kidnapping or forcible abduction was very common specially in Mirpur District, before it came under the rule of the Azad Kashmir Government. The fact, that no figures have been supplied by the Courts below for an offence of kidnapping or abduction, shows the respect of the people for women folk which is an important feature of Islamic Society. Similarly no matrimonial offences have been reported, and this also indicates how people are ready to observe the dictates of their religion. No case of youthful offenders was registered and the reason for it was that youths instead of committing criminal offences were engaged in fighting their enemy.

11. Offences under Local and Special Laws.

The number of offences reported during the period under Local and Special Laws is 849 in which 1065 persons were brought to trial. These figures include cases under the preventive sections of the Criminal Procedure Code also.

No person was brought to trial, convicted or detained for an offence against the State.

12. Disposals.

5560 cases of all sorts, including appeals and miscellaneous applications, were disposed of by various Magistrates during the period.

Excluding appeals and revisions 3885 regular original cases out of which 60 cases triable by Magistrates exercising section 30 Powers were decided by such Magistrates.

The Sessions Judges decided 105 cases, involing 317 persons.

13. Witnesses.

The number of witnesses examined in criminal cases is 15857.

14. Punishments inflicted.

The following table shows the punishments inflicted during the period under review:-

Period	Number of persons sentenced to				
	Death	Life imprisonment	Imprisonment.	Fine	Whipping
From 1st January 1948 to 30th June, 1949.	47	3	403	292	Nill

15. Appeals.

Sixty three appeals were decided by the Sessions Judges during the period under review.

16. Transfer Applications.

Total number of transfer applications filed in the Courts of the District Magistrates and the Sessions Judges was 83, all of which were decided by them.

B. HIGH COURT.

17. Sh. Abdul Majid presided as Judge from 18th May 1948 and as Chief Justice from 8th November, 1948. Sh. Abdul Rashid served as Puisne Judge from 8th November 1948.

18. In all 29 death references came before the High Court for confirmation and in appeal. The results were as follows:-

Capital sentence confirmed	...		...	...6
Sentence commuted to life imprisonment...				...3
Acquitted	...	...	...	...6
Died etc	...	...	...	...1
New trial ordered...		...	...	...2
Pending	...	...	...	...9

19. Mercy Petitions in all the cases decided by the High Court so far were rejected by the Council of Ministers.

20. Eight cases were decided by the High Court in Single Bench and 10 in Division Bench.

21. The High Court in revision enhanced the sentence imposed on one BOSTAN convict under section 326 Azad Kashmir Penel Code and sentenced him to one year's rigorous imprisoment and a fine of Rs. 1,000/-.

22. **Inspections**

The Chief Justice inspected the Courts of Sessions Judge, Mirpur, Sub-Judge Magistrate 1st Class, Mirpur, Additional Sub-Judge Magistrate Ist Class Mirpur, Sessions Judge, Muzaffarabad, Sub-Judge, Muzaffarabad and General Assistant, Magistrate Ist Class Muzaffarabad during the period ending June, 1949.

C. CIVIL.

The work on the civil side had been very meagre, as it will take time before the business of the war shattered area is restored and the civil litigation developed.

23. **Number of suits instituted.**

Number of the original suits instituted in the Courts of Sub-Judges was 546 with the following detail regarding different districts:—

Poonch District	...	...	165
Mirpur District	...	...	125
Muzaffarabad District	...	...	256

24. **Nature of Suits.**

The number of suits for money and moveable property was 358 and for land 88. The number of suits to establish a right of pre-emption was 2.

25. **Value of Suits.**

The aggregate value of suits instituted was Rs. 1,17,313/3/-.

26. **Disposal of regular suits.**

There were altogether 541 regular suits before the Courts during

the period, of which 281 were disposed of and 260 were pending on the 30th June, 1949.

The following table shows the manner in which these suits were disposed of :—

1.	Without trial	78
2.	Exparte	39
3.	On admission of claim	30
4.	Compromise	105
5.	After full trial	29

The number of suits pending at the close of the period under re-review is 260.

27. Miscellaneous cases.

In addition to regular suits the Sub-Judges decided 110 miscellaneous cases, including applications for the execution of the decrees. An amount of Rs. 1895/- was realised as a result of the execution proceedings.

28. Appeals.

The District Judges decided 3 appeals and 7 are pending with them.

D. MISCELLANEOUS.

29. Institution of Muftis.

The Govt. have appointed Muftis for the various Districts and Sub-Divisions in order to assists the Sub-Jueges in the decision of important questions of Islamic Law arising in civil suits. The Sub-Judges invite the opinion of Muftis before any decision of such question is given. It is unfortunate that no seperate record was kept of the cases in which Muftis were consulted and consequently these figures can not be quoted.

30. Legal practitioners.

There are 50 Pleaders on the rolls of the High Court of whom 45 are Law Graduates. 19 Pleaders have their ordinary places of business at various places in the Azad Kashmir territory.

Two Legal Practitioners as Public Prosecutors and one Legal Practitioner as Assistant Advocate General are in the service of Azad Kashmir Government. The Assistant Advocate General conducts cases on behalf of the Government in the High Court.

31. Jails.

There are three district Jails, one for each district. The Superintendents of these Jails were formerly the Sub-Judges posted at Headquarters but now the Medical Officers are in their charge. The Jails at Muzaffarabad and Mirpur were visited by the Chief Justice when Judicial Officers were in their charge. Only minor defects were noticed and were pointed out in the note written by the Chief Justice. It is hoped that those defects have been removed.

32. Supply of Furniture and Books etc.

At the time the Azad Kashmir Government took charge of the liberated territory all the Court Buildings, the furniture and the books stocked therein had been destroyed by the constant bombing by the enemy. In course of time the Government repaired the old buildings and raised new constructions for locating Courts. A sum of Rs. 10,000/- was sanctioned by the Government in November 1948 for the supply of neccessary furniture and books to the Courts. All the furniture required by the Courts and the books avilable in the 'market were accordingly supplied to the Courts. More money is still required in order to meet the requirements of Courts in the matter of books and other articles and it is hoped that the Government will be willing to sanction more money for that purpose as soon as the finances improve.

33. Revision of the grades of the Sub-Judges and Sessions Judges.

It was pointed out to the Government when budget for the current year was submitted that the grades of the Sub-Judges and Sessions Judges required revision because the the economy on the salary of the Judicial staff is always dangerous as it opens the door to corruption. The Judges are glad to say that the Government accepted their recommendations for the revision of the grades of Judicial Officers to a great extent and this has gone a long way to satisfy the incumbents of the Judicial posts.

34. Visit of United Nations Commission for India and Pakistan.

The members of Sub-Committee of the United Nations Commission for India and Pakistan visited the Courts in March 1948 to find out whether Azad Kashmir Government had taken steps to carry on the administration of civil and criminal justice in the liberated territory as efficiently as it was being done by any established Government because it was given out by the India Government that in the liberated area only raiders were holding away and no regular Government was functioning. The members of the Commission put several questions to the Judges at an interview about the laws administered in the liberated territory and the manner in which these laws were framed. The members of the Commission were given all the details required by them on this question and they were satisfied that the laws which were governing people had been duly adopted and enacted. The members of the Commission after interview attended the hearing of a murder appeal in the High Court and went round the Courts in Muzaffarabad thereafter. Two days later the members of the Commission toured the Mirpur District with that object in view. The general impression given by the members of the Commission was that the cry of India Government was a hoax and the Judicial Courts, which are the mainstay of the Government, were functioning properly. This view was also expressed in many foreign papers.

35. Laws.

The laws administered in the Azad Kashmir territory are based on the laws in force in Pakistan territory with certain amendments made to bring them in conformity with Islamic Law. So far as non-Muslims are concerned they are governed by their personal laws in the matter

of marriage, inheritance successions etc. In this connection it may be mentioned that the members of the Commission specially questioned the Judges that if the non-Muslims returned to the Kashmir territory then what laws would govern them and they were surprised when special personal laws framed for non-Muslims were shown to them. The members of the Commission also enquired about the registeration of marriages etc. and they were told that in this part of the country marriages were not necessary to be registered like civil marriages performed in Europe but, any-how, so far as Muslims were concerned the registers of Nikah Khawan were available for entering marriages.

E. MATTERS FOR CONSIDERATION OF THE GOVERNMENT.

36. Remedies for the expected increase of petty crimes.

As soon as conditions settle down the petty crime is bound to increase. In order to deal with the large number of cases which might come before the Courts it is necessary to increase the strength of the Judicial Officers and to improve the machinery for the investigation of cases so as to eliminate the chances of perjured evidence being given at the trial. The Judges, therefore, want to emphasize that the police should be made to realise that perjury defeats itself and an effort to strengthen a true but a weak case only means that a particular case may possibly result in conviction but the consequence is that many true cases fail. The police, therefore, should always be alert while sifting evidence tendered before them and they should cite only those witnesses in the challan who were believed to be stating truth. The police should also be made to understand that it is not their duty to with hold evidence and these remarks are meant only for their avoiding 'padding'. The increase in the number of Judicial Officers to cope with the work is asked for on the principle that justice delayed is justice defeated.

37. Revision of the budget for the current year.

The budget submitted to the Government for the judicial administration for the current year amounted to Rs. 218135/-. The budget sanctioned by the Government amounted to Rs. 1,32,700/-. The Judges consider that the drastic reduction made may not impaire the judical machinery and it is hoped that while preparing the revised budget the Government shall take into account the proposals of the High Court made in this behalf.

F. ACKNOWLEDGEMENTS.

38. The Judges are thankful to the Hon'ble Ministers for the keen interest taken by them in the Judicial Administration. It will not be out of place if it is mentioned that the Hon'ble President, who is in-charge of the portfolio of Law and Order, and, who is a Bar-at-law, was very helpful in removing all the difficulties experienced in setting up an up-to-date judical machinery. The Hon'ble Vice-President had discussions with the Judges several times to impress upon them to make the Courts function in a manner suitable for an Islamic State and the Judges greatly appreciate his efforts in that directions.

In the end the Judges thank Judicial Officers, (District Magistrates, Sub-Judges and other Magistrates) who have put in honest and hard work in difficult circumstances.

The Registrar of the High Court, Khawaja Bashir Ahmad Farooqui, has been of great help to the Judges throughout the period under review in introducing several reforms in the judicial administration. All the figures required for writing this report were collected by him after great effort. The task of writing the report would have been well-nigh impossible but for his help and the Judges thank him for the assistance rendered.

The Judges at this stage want to impress upon their subordinate officers that their promotion depends on performing their duties honestly, impartially and efficiently. They are advised not to follow the dictates of any political party in the dicharge of their duties. It might be mentioned that in the time of Caliphs to call a Qazi honest and impartial was considered an insult because no person could be appointed as Qazi unless he was reputed to be so.